IN THE

Supreme Court of the United States

October Term, 1966

No. 384

UNITED STATES OF AMERICA
EX REL. JOSEPH MAZEWSKI,

Petitioner

v.

ALFRED T. RUNDLE, Superintendent
State Correctional Institution
Graterford, Pennsylvania

COMMONWEALTH'S ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable, the Chief Justice of the United States and to the Associate Justices of the Supreme Court:

The Commonwealth of Pennsylvania, through Richard S. Lowe, District Attorney of Montgomery County, Pennsylvania by his Assistant District Attorney, Richard A. Devlin, makes the following Answer to Petitioner's Petition for a Writ of Certiorari:

I. PETITIONER GROSSLY DISTORTED AND MISSTATED FACTS.

1. It is denied that there was a "forceful" entry by the police, and further denied that there was an illegal search and seizure in this case.

2. It is denied that there was a second search made at the police station.

3. It is denied that petitioner had no opportunity to communicate with counsel following his arrest. To the contrary, defendant was represented by at least three separate privately retained lawyers from the time of his arrest up to the time of his trial.

4. It is denied that petitioner had no opportunity to file Motions to Suppress Evidence. To the contrary, he was released on bail and had every opportunity to engage counsel for this purpose.

5. It is denied that Kingsley A. Jarvis, Esquire did not spend time in preparation of petitioner's case. To the contrary, the record indicates that considerable time and effort was spent by Mr. Jarvis in preparation for the trial. (N.T. District Court Hearing, Page 118).

6. It is admitted that Roger B. Reynolds, Esquire withdrew from the case. However, it is also averred that Mr. Reynolds offered to represent petitioner at his trial. (Trial N.T. Page 12).

7. It is denied that petitioner was denied counsel of his choice. The record indicates that he had the opportunity to retain and pay E. Harris Baum, Esquire if he chose to do so.

8. It is denied that a sentence of 18 months to three years was imposed in connection with the trial at issue.

9. Petitioner's statement on Page 6 of the petition that "There is no such testimony (that petitioner did not want a lawyer to represent him) in the trial record" is untrue. The record indicates the following testimony:

> "THE COURT: Well, the Supreme Court of the United States says that in any serious case you (sic) must afford counsel to you, if you want counsel.

"THE DEFENDANT: I don't want none, your Honor." (N.T. 13).

* * * * *

"MR. REYNOLDS: So that there is no misunderstanding, if your Honor please, Mr. Mazewski does not desire counsel?

"THE COURT: That is what I understand him to say.

"MR. REYNOLDS: Then your Honor gives me permission to withdraw as associate?

"THE COURT: I give you that permission.

"MR. REYNOLDS: Thank you, sir.

"THE COURT: Do you have any objection to releasing Mr. Reynolds?

"THE DEFENDANT: No." (N.T. 15).

* * * * *

"THE COURT: Yes, Mr. Mazewski, at the Bar of the Court, voluntarily stated his willingness to waive a jury trial and is fully advised of his legal rights, aware of his legal rights, and has consented to have this case proceed to trial without his having the benefit of counsel during the course of the trial. Is that correct, Mr. Mazewski?

"THE DEFENDANT: Yes." (N.T. 16).

* * * * *

II. THE ISSUE OF RIGHT TO DIRECT APPEAL WAS NOT RAISED IN THE DISTRICT COURT:

There is nothing in the record to substantiate petitioner's claim of denial of the right to a direct appeal. Furthermore, this issue was not even raised in the District Court or in the United States Court of Appeals.

WHEREFORE, the District Attorney of Montgomery County, Pennsylvania respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

RICHARD S. LOWE
District Attorney
Montgomery County, Pa.

RICHARD A. DEVLIN
Assistant District Attorney
Montgomery County, Pa.

HENRY T. CROCKER
Assistant District Attorney
Montgomery County, Pa.